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Honorable Bryan D. Lynch
Chapter 11
Location: Tacoma

FILED
Western District of Washington
at Tacoma

DEC - 1 2010

**MARK L. HATCHER, CLERK
OF THE BANKRUPTCY COURT**

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In re

ZACHARY MILLER and JENNIFER
MILLER,

Debtors.

Case No. 10-44958-BDL

**ORDER GRANTING TRUSTEE'S
MOTION FOR AN ORDER
PURSUANT TO 11 U.S.C. § 363 AND
BANKRUPTCY RULE 6004
(i) AUTHORIZING AND APPROVING
THE SALE OF THE ESTATE'S
STOCK OUTSIDE OF THE
ORDINARY COURSE OF
BUSINESS; (ii) AUTHORIZING THE
CONDUCT OF AN AUCTION SALE
OF THE ESTATE'S STOCK AND
SETTING BIDDING PROCEDURES
RELATED THERETO; (iii) FIXING
THE MANNER AND EXTENT OF
NOTICE OF SALE AND
OPPORTUNITY TO BID FOR
ASSETS; AND (iv) FIXING A
HEARING DATE FOR AUCTION AND
APPROVAL OF THE SALE
("BIDDING PROCEDURES ORDER")**

THIS MATTER came before the Court upon the motion of Miles Stover
("Trustee" or "Seller"), solely in his capacity as Trustee of the estate ("Estate") in this
bankruptcy case of Zachary Miller and Jennifer Miller ("Debtors") for an Order

ORDER GRANTING TRUSTEE'S MOTION FOR ORDER APPROVING
SALE OF STOCK . . . (NO. 10-44958-BDL) - 1
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113010/1831/64448.00001

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1 (i) authorizing and approving sale of the Estate's stock ("Stock")¹ outside of the
2 ordinary course of business; (ii) authorizing the conduct of an Auction sale of the
3 Stock and setting the Bidding Procedures related thereto; (iii) fixing the manner and
4 extent of notice of the Sale and opportunity to bid for the Stock; and (iv) fixing a date
5 for the Auction and hearing for approval of the Sale and Auction results (collectively,
6 the "Sale Motion") (Docket No. 81).

7 The Court has reviewed the sale Motion and the Declaration of Miles Stover
8 and the files and records herein, and has heard and considered the arguments and
9 submissions of counsel, and being now fully informed on the premises, IT IS
10 HEREBY ORDERED as follows:

11 1. The Sale Motion is granted to the extent it requests approval for
12 Trustee to conduct the Auction, the establishment of Bidding Procedures, the
13 scheduling of a Sale Hearing to consider the Auction results and approval of the
14 Sale, and notice procedures related to the foregoing;

15 2. Trustee is authorized to conduct the Auction on the following schedule
16 and pursuant to the following Bidding Procedures:

- 17 i. Notice substantially in the form attached to the Sale Motion as
18 Exhibit B shall be mailed to all parties required by Rule 2002(a)
19 as soon as reasonably possible after the entry of an Order
20 granting this Sale Motion, and to any other parties reasonably
21 known by Trustee to be interested and qualified to purchase the
22 Stock.
- 23 ii. All interested parties are invited and encouraged to conduct
24 reasonable due diligence for purposes of making a bid for any or

25 _____
26 ¹ Capitalized terms not otherwise defined herein shall have the same meaning as provided in the Sale Motion.

1 all of the Stock, subject to executing an appropriate
2 confidentiality agreement. Trustee shall coordinate the efforts of
3 bidders in conducting their respective due diligence
4 investigations regarding the Stock and provide reasonable
5 assistance to all interested parties.

6 iii. If Trustee receives qualified bids, Trustee will conduct an auction
7 (the "**Auction**") of the Stock at **10:00 a.m. Pacific Time on**
8 **December 14, 2010**, at the offices of Trustee's counsel, Riddell
9 Williams P.S., 1001 Fourth Avenue, Suite 4500, Seattle,
10 Washington 98154. If there are no qualified bids, then no
11 Auction will be necessary, and Trustee may ask the Court at the
12 Sale Hearing to approve the Stock purchase agreements of
13 Purchasers as applicable.

14 iv. In order to be qualified to bid at the Auction, bidders must deliver
15 to Trustee's counsel, prior to the Bid Deadline, sufficient
16 information to demonstrate to Trustee, in his sole discretion, that
17 the competing bidder has the financial wherewithal and ability to
18 timely consummate the acquisition of the Stock on terms and
19 conditions substantially the same as the applicable Stock
20 purchase agreement, including evidence of adequate financing
21 and a financial guarantee, if appropriate.

22 v. In order to be qualified to bid at the Auction, bidders must make
23 a firm bid, for some or all of the stock, which is an amount that is
24 equal to or greater than the Purchaser's offer plus 3%. Trustee
25 will provide copies of all written bids to counsel for the
26 Committee within one (1) business day after receipt. Written

1 bids submitted prior to the Auction Date must be submitted so as
2 to be received by Trustee's bankruptcy counsel, Joseph E.
3 Shickich, Jr., Riddell Williams P.S., 1001 Fourth Avenue, Suite
4 4500, Seattle, Washington 98154, not later than **4:00 p.m.**
5 **Pacific Time on December 9, 2010** (the "Bid Deadline").

- 6 vi. If a higher qualified bid is received by Trustee's counsel prior to
7 the Auction that is at least three percent (3%) above the
8 Purchaser's offer, that bid shall be considered irrevocable and
9 shall be the opening bid at the Auction, and all subsequent bids
10 must be in increment of at least one and one-half percent (1.5%)
11 higher than the existing high bid.
- 12 vii. All bids submitted at the Auction must be for cash, payable in full
13 at closing, or on terms acceptable to Trustee, and without any
14 contingencies or conditions to closing, including but not limited to
15 financing or due diligence. All bids must be for purchase of the
16 Stock on substantially the same terms and conditions set forth in
17 the applicable Stock purchase agreement, with only the identity
18 of the buyer, related conformational changes and other
19 nonmaterial terms of the transaction subject to variation by
20 competing bidders.
- 21 viii. Trustee reserves the right to allow participation in the Auction by,
22 telephone, the internet or other electronic means. At the
23 Auction, all bidders will be permitted to increase their bids.
- 24 ix. The Auction and Sale Hearing may be adjourned or rescheduled
25 by Trustee without notice other than by an announcement of the
26 adjourned date at the Auction.

- 1 x. At the conclusion of the Auction, Trustee shall declare the
2 highest and best bid as the "Winning Bid." In the event that bids
3 are submitted for less than all of the Stock or bids include non-
4 cash components (e.g., assumption of debt), Trustee shall
5 recommend to the Court the bid to be declared the Winning Bid.
- 6 xi. In the event that a party submitting a Winning Bid fails to
7 consummate the proposed transaction by the Closing Date (as
8 defined below), Trustee shall have the right to pursue all
9 remedies that may be available to him. If the next highest bidder
10 has agreed to remain as a Back-up Bid, Trustee shall be free to
11 consummate the proposed transaction with the next highest
12 bidder at the final price bid by such bidder at the Auction (or, if
13 that bidder is unable to consummate the transaction at that
14 price, Trustee may consummate the transaction with the next
15 higher bidder who agreed to remain as a Backup Bid, and so
16 forth) without the need for an additional hearing or order of the
17 Bankruptcy Court.
- 18 xii. Trustee, in his absolute discretion, may reject any bids not in
19 conformity with the requirements of this Order, the Bankruptcy
20 Code, the Bankruptcy Rules or the Local Bankruptcy Rules of
21 the Court, or contrary to the best interests of the Debtor.
- 22 xiii. All bids are irrevocable until the entry of an Order confirming and
23 approving the results of the Auction and sale of the Stock. All
24 Back-up Bids are irrevocable until the earlier to occur of: (i) the
25 closing of the Sale Transaction, or (ii) twenty-one (21) days
26 following the last date of the Auction (as may be adjourned),

1 such that they may be accepted and consummated if the best
2 and highest bid or bids accepted by the Trustee at the Auction
3 and approved by the Court are not consummated by a closing
4 on the purchase of the Stock (the "Closing"); provided that
5 Trustee specifically reserves the right to seek all available
6 damages from any defaulting Winning Bidder.

7 xiv. All bids are subject to such other terms and conditions as may
8 be announced by Trustee prior to the outset of the Auction.

9 xv. All sales of the Stock shall be sold on an "as is, where is" basis
10 and without representations or warranties of any kind, nature or
11 description by Trustee, Debtors or any other party in interest. All
12 of the Estate's right, title and interest in and to the respective
13 Stock shall be sold free and clear of all known pledges, liens,
14 security interests, encumbrances, claims, charges, options and
15 interests thereon (collectively, the "Transferred Liens"), such
16 Transferred Liens to attach to the net proceeds of the sale of
17 such Stock, unless expressly assumed as part of the
18 transaction.

19 xvi. At the **Sale Hearing** to be held at **9:30 a.m. Pacific Time on**
20 **December 15, 2010**, Trustee shall present the successful bid for
21 the Stock to the Bankruptcy Court for approval. Any order
22 approving the Sale shall: (i) approve the Sale and the transfer of
23 the Stock to the successful purchaser free and clear of any and
24 all liens, claims, and encumbrances of any kind or nature
25 whatsoever to the extent permitted by law (other than any
26 assumed debt or permitted liens agreed to by Trustee and the

1 successful purchaser), with any and all valid and enforceable
2 liens, claims and encumbrances attaching to the sales proceeds
3 at the Closing; and (ii) upon reasonable showing, contain a
4 finding that the successful purchaser is a good faith purchaser
5 pursuant to section 363(m) of the Bankruptcy Code.

6 xvii. A party submitting a Winning Bid must close the transaction not
7 later than the later of (i) fifteen (15) days after the Sale Approval
8 Order becomes final and no longer subject to appeal, or if on
9 appeal, not subject to a stay pending appeal, (ii) **December 31,**
10 **2010**, or (iii) as may be agreed upon by the purchaser and the
11 Debtor (collectively, the "**Closing Date**").

12 xviii. Purchasers and all bidders shall be deemed to have submitted
13 to the exclusive jurisdiction of the Bankruptcy Court with respect
14 to all matters related to the Sale and the terms and conditions of
15 the transfer of the Stock.

16 3. The Sale Hearing is hereby scheduled on **Wednesday, December 15,**
17 **2010 at 9:30 a.m.** at the United States Bankruptcy Court, **U.S. Courthouse, 1717**
18 **Pacific Avenue, courtroom of the Honorable Bryan D. Lynch, Tacoma,**
19 **Washington 98402**, at which time Trustee will present to the Court the results of the
20 Auction and the Winning Bid, and seek approval of the Sale.

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4. Any objections to the conduct of the Auction, the Bidding Procedures or consummation of the Sale must be filed with the Clerk of the Bankruptcy Court and served upon counsel for Trustee, counsel for the Committee, the United States Trustee and all parties requesting special notice in this case so as to be actually received by each such party no later than **4:00 p.m. prevailing Pacific time on December, 14, 2010.**

DATED this 8 day of December, 2010.

Honorable Bryan D. Lynch
United States Bankruptcy Judge

Presented by:

RIDDELL WILLIAMS P.S.

By: 
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